

**Gelb and Sons Electric Corp. and Keith Leacock.**  
Cases 29-CA-14329 and 29-CA-14543

March 2, 1994

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND TRUESDALE

On August 20, 1991, the National Labor Relations Board issued an unpublished Order adopting, in the absence of exceptions, the decision of the administrative law judge directing Gelb and Sons Electric Corp. (the Respondent) to, inter alia, offer reinstatement to Keith Leacock, and to make him whole for any loss of earnings he may have suffered, with interest, resulting from the discrimination against him in violation of the National Labor Relations Act. On March 3, 1992, the United States Court of Appeals for the Second Circuit entered its judgment enforcing the Board's Order.

A controversy having arisen over the amount of backpay due to Keith Leacock, on October 21, 1993, the Regional Director for Region 29 issued a backpay specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the backpay specification, the Respondent failed to file an answer.

On November 15, 1993, counsel for the General Counsel mailed a letter to the Respondent by certified mail advising the Respondent that no answer to the backpay specification had been received and that unless an appropriate answer was filed by close of business on November 22, 1993, summary judgment would be sought. This letter was returned marked "Unclaimed." Thereafter, on December 10, 1993, counsel for the General Counsel mailed a second letter to the Respondent by regular mail reiterating that no answer had been received and advising that unless an answer was received by close of business on December 17, 1993, a Motion for Summary judgment would be filed. The Respondent filed no answer.

On February 7, 1994, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On February 9, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the backpay specification are therefore undisputed.

**Ruling on the Motion for Summary Judgment**

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer

within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the backpay specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the backpay specification to be admitted as true, and grant the Acting General Counsel's Motion for Summary Judgment.<sup>1</sup> Accordingly, we conclude that the net backpay due Keith Leacock is as stated in the backpay specification and we will order payment by the Respondent of that amount, plus interest.

**ORDER**

The National Labor Relations Board orders that the Respondent, Gelb and Sons Electric Corp., Brooklyn, New York, its officers, agents, successors, and assigns, shall make whole Keith Leacock by paying him the amount of \$11,555, plus interest accrued to the date of payment, minus tax withholdings required by Federal, state, and local laws.

Dated, Washington, D.C. March 2, 1994

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James M. Stephens, Chairman

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Dennis M. Devaney, Member

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John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>1</sup> Although counsel for the General Counsel's initial letter sent to the Respondent by certified mail was returned marked "Unclaimed," the Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).